



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

from. *Harris et al. v. Eebelhoer*, 75 N. Y. 169; *Lortz v. N. Y. C. H. R. R. R.*, 7 App. Div. 515, 40 N. Y. Supp. 253; *Jennings v. Van Schaick*, 108 N. Y. 530, 15 N. E. 424, 2 Am. St. Rep. 459; *Stackus v. N. Y. C. H. R. R.*, 79 N. Y. 464; *Mamey v. Curtis*, 113 App. Div. 421, 99 N. Y. Supp. 288. This being the rule of law, it cannot be held as matter of law that the plaintiff was guilty of contributory negligence."

Workmen's Compensation Acts—Basing Compensation on Tips Received without Employer's Knowledge.—In *Begendorf v. Swift & Co., Inc.*, 183 N. Y. S. 917, the Supreme Court of New York held that employees receiving "tips" from third parties are entitled to have such sums considered in determining the amount of their awards under the New York Workmen's Compensation Law, provided the employers contemplate that the men should receive such gratuities, but that where a truck driver employed to deliver meat received tips from customers without the knowledge of the employer, the amount so received could not be considered in fixing the amount of compensation under the statute, in the absence of evidence of a custom to give tips to persons so employed.

The court said: "The claimant, who was receiving \$25 a week as compensation from his employer, also received on an average \$5 per week as tips from the customers of the latter. The question is whether such tips should be taken into consideration in fixing the amount of compensation. He was a truck driver, and delivered meat for the employer, a corporation engaged in the meat business. The tips were received by him when making deliveries of meat to the customers of the employer. It is admitted that the employer had no knowledge of these gratuities.

"Pullman porters, restaurant waiters, taxicab drivers, and other. receiving tips from third persons are entitled to have such tips considered in determining the amount of their awards for injuries under the Workmen's Compensation Law (Consol. Laws, c. 67), providing the employers in such cases contemplate and intend that their employees shall receive such gratuities. In such cases the compensation paid by the employers is correspondingly less, and they are therefore benefited by such gratuities. That was the theory of the decisions in *Matter of Bryant v. Pullman Co.*, 188 App. Div. 311, 177 N. Y. Supp. 488, affirmed 228 N. Y. 579, 127 N. E. 909, and *Matter of Sloat v. Rochester Taxicab Co.*, 177 App. Div. 57, 163 N. Y. Supp. 904, affirmed 221 N. Y. 491, 116 N. E. 1076. The case is different when an employee secretly receives gratuities from outside parties not within the knowledge or contemplation of his employer.

"If the claimant in this case performed services for the customers of the employer for which he was not paid by the latter, he was

doing something outside of his employment, and compensation or gratuities received by him therefor without the knowledge of the employer cannot be made the basis of compensation. There is no evidence of custom to give tips to persons engaged in such business as the claimant. If there was such a custom, no one knew it better than he, and he makes no such claim. Secret compensation from third parties to an employee under the circumstances here disclosed is not consistent with loyalty to his employer and is not commendable, and certainly should not be rewarded at the expense of the employer, by increased compensation for injuries. The award should be reversed, and the matter remitted to the commission."